IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR

BENCH, JAIPUR.

J U D G M E N T

QAYOOM KHAN & ANR. Vs. SMT. AZEEZA BANO & ORS.

S.B. CIVIL MISC. APPEAL No.304/1995
against the award dated 20.9.1994
passed by the Judge, MACT, Jaipur city
in claim case No.583/1987.

Date of Order ** April 20, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Rajiv Bandhu for the appellants.
Mr. Mahendra Goyal)for the respondents-claimants.
Mr. Manish Bhandari for Insurance Company.

BY THE COURT:

1. This appeal is directed against the award dated 20.9.1994 by deciding the claim case No.583/87. In an accident on 12.8.1987 at 11.00 AM near Housing Board Circle, Jaipur, one Nisar Ahmed met with an accident with Tractor No.RJV-1665 driven by non-applicant no.1 Prakash Chand in a rash and negligent manner and he died as a result of said accident.

2. The learned Tribunal while deciding the issue no.1 in favour of the claimants as to rash and negligent driving of the said tractor, decided issue no.3 in favour of Insurance Company and against the claimants and held that the Insurance Company was not liable to pay the compensation in question. The Tribunal awarded a lump sum amount of Rs.1,15,000/- in favour of the claimants. The claimants have filed cross-objections this appeal of the owner of the

vehicle, claiming enhancement of the compensation.

3. While absolving the Insurance Company non-applicant no.3 United India Assurance Co. Ltd., the Tribunal noted that though the Certificate of Insurance Ex.A-1 (Policy No.140300/25/1/342 and Certificate No.140300/25/6/1149) in respect of said tractor was issued on 13.8.1987 by one Mr.Kalu Ram Choudhary, AAO of the Insurance Company and neither any cover note nor any regular Insurance Policy was issued by the Insurance Company nor the insured owner of the vehicle could produce any receipt showing the deposit of premium which is alleged to have been given to Naresh Kumar, the rural representative of Insurance Company to whom such premium is said to have been paid on 11.8.87. The insurance Company in its defence produced 3 persons before the Tribunal i.e. Nirankar Singh, Divisional Manager; Pooran Mal Nagar employed in the Branch of the Insurance Company and Jagdish Mal Bhansali, while contending before the Tribunal that Ex.A-1 certificate of Insurance was not the Insurance Policy for the Tractor in question. The premium is said to have been taken by the rural representative Naresh Chand and Kalu Ram Choudhary, AAO whose signatures are there on Ex.A-1, issued the Certificate of insurance, Ex.A-1. In the statements of Nirankar Singh, Divisional Manager, though he has stated that the premium for the said insurance was not deposited with the Branch and nor regular policy was issued for the said tractor, however the existence of Ex.A-1 document has not been disputed by the said witness who is a responsible officer of the Insurance Company. An FIR is also said to have been filed against the said person Naresh Chand on which the police after investigation submitted negative final report and no further proceedings were taken thereafter. It also appears that certain disciplinary

proceedings were taken against the said person.

4. Learned counsel for the appellant relies upon the following judgments in respect of his submissions:

(i) **1995 ACT 976** [Bhal Nalkantha Khadi Vs. Jayantilal & ors.]; and

(ii) **1995 ACJ 657** [United India Ins. Co. Vs. Kamlesh Singh and ors.]

He submits that in view of Ex.A-1 Certificate of Insurance Tribunal has erred in absolving the Insurance Company from its liability.

5. Be that as it may, the concerned person in relation to the said document Ex.A-1 Shri Kalu Ram Choudhary, AAO and Naresh Chand to whom the premium for the said insurance of Rs.36/- is said to have been given were not produced before the Tribunal for the reasons best known to the Insurance company. The said certificate of insurance clearly shows the effective date of the commencement of the policy to be 12.8.87 to be effective upto 11.8.88. The same is issued on 13.8.87 bearing seal of Insurance Company and signatures of AAO Shri Kalu Ram Choudhary. The accident in question is said to have been taken place on 12.8.87 itself. However, so long as the Ex.A-1 Certificate of Insurance is not disproved, in the opinion of this Court, the Insurance company could not have been absolved from its liability to pay the compensation awarded by the Tribunal.

6. The Tribunal appears to have based its conclusion absolving the Insurance Company from its liability swayed by the fact that there was no receipt showing the deposit of

premium of Rs.36/- ignoring the document Ex.A-1 which also indicates the said amount of RS.36/- towards the premium for the said tractor. Therefore, the conclusion of the Tribunal that Insurance Co. was not liable to pay the compensation in question, cannot be sustained and the said finding of Tribunal on issue no.3 is set aside.

7. So far as amount of compensation is concerned, this Court is of the view that the compensation awarded by the Tribunal is just and fair and does not call for any interference of this Court. The cross-objections filed by the claimants as to enhancement of the amount are liable to be rejected. The cross-objection on the issue of absolving the Insurance Company in respect of the owner of the vehicle is disposed of with the observations that the Insurance Company would be liable to pay the compensation as awarded by the Tribunal in the present case along with owner of the vehicle.

8. The appeal of the owner on this issue is accordingly allowed and the compensation awarded by the Tribunal shall be paid by jointly and severally by the owner and the Insurance Company within a period of three months.

9. The appeal and cross-objections are accordingly disposed of. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/